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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,633	09/16/2003	Franz Knauseder	35995	1925

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EXAMINER

KATCHEVES, BASIL S

ART UNIT PAPER NUMBER

3635

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/663,633	<b>Applicant(s)</b> KNAUSEDER, FRANZ	
	<b>Examiner</b> Basil Katcheves	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 34-43 and 45-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-43 and 45-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant has cancelled claim 44 in the amendment dated 5/11/05. Pending claims 34-43 and 45-66.

### ***Claim Rejections - 35 USC § 102***

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 34-43, 45-58, 60, 62-64 and 66 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,729,091 to Martensson as in the previous office action.

Regarding claim 34, Martensson discloses joined panels (fig. 13) having surfaces joined along a common plane with a form fit connection (holding the panels in both a perpendicular and parallel direction and along the plane of the connection (2) having coupling elements (6' & 60). Martensson also discloses the element (11, 12) as holding the panels in a second direction and a second element (6) holding the panels in the first and third directions and the movable portions as being compressed to fit in a third direction (see snap fit of the ends of 6).

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Regarding claim 35, Martensson discloses the use of wood for the panels (column 1, line 14).

Regarding claim 36, Martensson discloses the coupling elements as separable from the panels.

Regarding claim 37, Martensson discloses the coupling element as separable from the panels and horizontal contact sections (where 6' points) which connect the panels in a second direction (parallel to surface plane).

Regarding claim 38, Martensson discloses the element as having first vertical surfaces (see vertical sides of 6').

Regarding claim 39, Martensson discloses the element as having second vertical contact surfaces (see vertical side of 6' and 12).

Regarding claim 40, Martensson discloses a tongue and groove connection (11 & 12 and 6', 60 into 4).

Regarding claim 41, Martensson discloses the element as held in a recess (4) with horizontal contact (top and bottom of 6).

Regarding claim 42, Martensson discloses a press fit connection (fig. 13: see 6' & 60 pressed into 4).

Regarding claim 43, Martensson discloses the element (6) as form fitted to fit into recess (4).

Regarding claim 45, Martensson discloses the elements as being separate (6 and 11, 12).

Regarding claim 46, Martensson discloses the second element as having moving portions (see ends of 6).

Regarding claim 47, Martensson discloses the movable portions as being compressed to fit in a third direction (see snap fit of the ends of 6).

Regarding claim 48, Martensson discloses a snap fit between the element 6 and the recess for which it fits into.

Regarding claim 49, Martensson discloses an undercut locking surface (fig. 13: 4" to prevent the element from being withdrawn.

Regarding claim 50, Martensson discloses a chamfer cut in the recess (see inner most end of recess 4) and a chamfer on the connecting element (60).

Regarding claim 51, Martensson discloses a recess wall (side wall where 4" points).

Regarding claim 52, Martensson discloses the element (6) as sized to correspond with the recess (4).

Regarding claim 53, Martensson discloses the separate element as having an H shape (6).

Regarding claim 54, Martensson discloses the element as having two parallel arms (6' & 60).

Regarding claim 55, Martensson discloses the element as fitting into the recess in the second direction.

Regarding claim 56, Martensson discloses locking surfaces (6' & 60) at the ends of the arms for engaging the undercut.

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Regarding claim 57, Martensson discloses a taper at the ends of the arms which bend toward each other temporarily while being inserted into the recess.

Regarding claim 58, Martensson discloses the recess as shaped in a manner that may be done by milling.

Regarding claim 60, Martensson discloses a decorative layer (abstract).

Regarding claim 62-64, Martensson discloses the panels as having coupling elements provided on narrow and longitudinal sides (fig. 2).

Regarding claim 66, Martensson discloses the panels as making a floor (figs. 7-9).

### ***Claim Rejections - 35 USC § 103***

Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,729,091 to Martensson in view of U.S. Patent No. 6,763,643 to Martensson as in the previous office action.

Regarding claim 59, '091 does not specifically disclose the use of MDF or HDF. Martensson '643 discloses the use of MDF and HDF for use in floorboards (column 2, lines 51-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify '091 by using MDF or HDF as disclosed by '643, in order to increase the resilience.

Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,729,091 to Martensson in view of U.S. Patent No. 6,763,643 to Martensson further in view of U.S. Patent No. 5,866,057 to Roffael.

Regarding claim 61, Martensson '091 does not disclose compressed papers and an amino-plastic thermo-hardening resin. Martensson '643 discloses several papers (fig. 2c: 1) and Roffael discloses the use of an amino-plastic thermo-hardening resin for making particle board (column 2, lines 18-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Martensson by using laminate sheets, as disclosed by Martensson '643 and using an amino-plastic thermo resin as disclosed by Roffael (column 2, lines 18-24) in order to increase the strength of the floor tiles.

Claims 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,729,091 to Martensson.

Regarding claim 65, Martensson discloses the panels as being square or rectangular (figs. 1a and 2). but does not disclose specific dimensions. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

### ***Response to Arguments***

Applicant's arguments filed 5/11/05 have been fully considered but they are not persuasive. Applicant argues that the secondary coupling element, being compressible in a 3<sup>rd</sup> direction, reads over the prior art of Martensson. However, applicant should note that the secondary coupling components of Martensson (6) is inherently capable of coupling in the same 3<sup>rd</sup> direction as that of the application due to its shape and receiving surface (4" & angled area adjacent to 4). Applicant also argues the receiving recess of the secondary coupling element be shaped to milled. Applicant should note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any



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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK

  
Basil Katcheves

7/21/05

Primary Examiner